

adjusted the class code applicable to Advantage employees working at TAG to Code 3507. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Commissioner of Commerce and Insurance (the "Commissioner") has jurisdiction over this matter pursuant to Tenn. Code Ann. § 56-5-309(b).

2. Advantage is a staffing company engaged in providing employees to work in factories and light industrial positions on a temporary basis. The principle office of Advantage is 5502 Brainerd Road, Chattanooga, TN 37411.

3. Advantage assigned employees to work at TAG, a business located in Chattanooga, Tennessee engaged in the manufacture of various types of attachments for heavy equipment used in construction, agriculture and industry.

3. Liberty is an insurance company which holds a certificate of authority to sell workers' compensation coverage in the state of Tennessee.

5. Liberty issued a workers' compensation and employer liability policy to Advantage for coverage from November 2004 through November 2005. A final audit of such policy determined that the correct Class Code to be assigned to Advantage employees working at TAG was Code 3632 (Machine Shop -- Not Otherwise Classified).

6. On November 8, 2005, Advantage completed a renewal application for workers compensation coverage through the Tennessee Workers Compensation Insurance Plan ("TWCIP"). On its application, Advantage indicated that the appropriate for employees working at TAG was Class Code 3113 (Small Tool Mfg. -- Not Otherwise Classified).

7. Liberty issued Workers' Compensation and Employers Liability Policy Number WC2-35S 322680-025 (the "Policy") to Advantage for the period November 14, 2005 through November 14, 2006 (the "Policy Period").

8. The National Council on Compensation Insurance ("NCCI") is the advisory organization designated by the Commissioner pursuant to Tenn. Code Ann. § 56-5-320 to administer the uniform classification system for workers' compensation for the State of Tennessee.

9. Workers' compensation classification codes are determined in accordance with the *Basic Manual for Workers' Compensation Liability Insurance* ("*Basic Manual*") and *Scopes of Manual Classifications* ("*Scopes Manual*") published by NCCI. The *Scopes Manual* describes and explains the classifications contained in the *Basic Manual*.

10. Rule 1-D-3-f of the *Basic Manual* provides as follows:

Employee Leasing, Labor Contractors and Temporary Labor Services

- (1) Workers assigned to clients must be classified the same as direct employees of the client performing the same or similar duties.
- (2) If the client has no direct employees performing the same or similar duties, leased employees are classified as if they were direct employees of the client entity.

11. Rule 1.D. of the *Basic Manual* states that "[t]he purpose of the classification procedure is to assign the one basic classification that best describes the business of the employer within a state."

12. On or about January 4, 2006, Michael Welch ("Mr. Welch"), an auditor for Liberty, conducted a physical audit of Advantage. Although he had previously determined that Code 3632 should be applied to the TAG payroll for previous policy years, Mr. Welch determined that, based on an on-site inspection of the manufacturing process at TAG and finished products, the correct Class Code to be applied was Code 3507 (Construction or Agricultural Machinery Mfg.).

13. NCCI conducted an inspection of TAG on September 27, 2006. The Inspection and Classification Report ("*Inspection Report*") produced indicated that the correct Class Code for the TAG payroll should be Code 3507. The NCCI Inspection Report summarized the manufacturing process involved as follows:

The manufacturing process begins when a steel plate is placed on a conveyor and rolled into a CNC (computer numerical control) laser cutting machine. The machine will cut the plate to specs programmed by a design engineer. Some of the cut pieces may be placed into the press brake machine which is used to form or roll the metal into various shapes. As the parts roll out of either the laser cutter or press brake, they be drilled or punched before being separated and placed into bins. The bins are placed into a "work cell" where assembly begins. The partially assembled attachment is sent to "fit up" where it is tacked together then sent for final welding. The insured does not produce the teeth that are attached to the buckets. The teeth are produced by an outside contractor, they are sent to the insured who will weld them onto their finished attachments. Once the final welding is complete the attachment is cleaned and painted.

14. In a letter dated October 19, 2006 Kim Zersen, Assistant Vice President of Aon, the TWCIIP administrator, advised First Volunteer Insurance that Aon concurred with NCCI determination that the proper classification code to be applied for Advantage employees working at TAG was Code 3507.

15. Advantage filed an appeal by letter on October 25, 2006, contesting the assignment of Code 3507. Advantage argued that, although it had indicated on its application for workers' compensation insurance coverage that Class Code 3113 was appropriate, it believed that Code 3620 (Boilermaking) was appropriate because it is "the proper and exact process that is involved in the manufacturing of buckets." Advantage further argued that Code 3507 is reserved for those companies that make "mobile equipment" rather than "machine fixtures," and that a bucket that goes on a mobile equipment machine is by definition a "machine fixture."

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Comp. R. and Regs. 1360-4-1-.02(7), the Petitioner, Advantage, bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. § 56-5-320(c) requires each insured to be a member of the designated rate service organization and to adhere to a uniform risk classification system filed by such organization and approved by the Commissioner.

3. Pursuant to Tenn. Code Ann. § 56-5-320, NCCI is the Commissioner's designated rate service organization for workers' compensation insurance.

4. Advantage failed to show by a preponderance of the evidence that the assignment of Code 3507 to Advantage employees assigned to work at TAG was incorrect. Both parties in this matter agree that TAG is engaged in the manufacture of attachments used on construction, industrial

and agricultural equipment, particularly various types of "buckets." Although no Class Code is perfectly descriptive of the manufacturing process that reflects the risk being insured, Liberty provided uncontested evidence that the phraseology of Code 3507 most accurately describes such process and, in addition, references the finished product manufactured. According to the *Scopes*

Manual:

The equipment involves the use of welding and machine shop apparatus including shears, punch presses, turret and engine lathes, drill presses, milling machines, grinders, boring mills and gear shapers. In general, castings are processed with the machine shop equipment, or steel framing is cut to size or other steel parts are shaped on power rolls. Assembling of parts is by welding or bolting.

Code 3507 is also assigned to the manufacture and fabrication of . . . water screen baskets, conveyor buckets and blow chutes used in sawmills, manufacturing of the Caterpillar type and other products in which the manufacturing or fabricating process involves the use of heavy-gauge metal, welding, riveting, bolting, etc.

Neither Code 3113, which applies to tools, dies, jigs and machine fixtures, nor Code 3632, which applies to the manufacture or repair of machines, accurately describes the manufacturing process at TAG. Code 3620, which references cutting, rolling and drilling plate steel, describes a manufacturing process which is arguably similar to that defined in Code 3507; however, Code 3507 references the manufacture of "baskets" and "buckets" used on mobile machinery, whereas Code

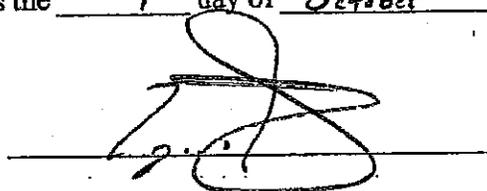
3620 does not. The manufacturing of plate steel and material handling equipment such as loader buckets, excavator buckets, couplers, hydraulic thumbs, ditch buckets, dozer blades and buckets used to store or move materials and have been assigned to Code 3507.

6. Tenn. Comp. R. and Regs. 0780-1-82-10(2) provides that "[o]rders issued under this Rule shall assign the costs of the appeal, in the commissioner's discretion, to the non-prevailing party."

NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** as follows:

1. The appeal of Advantage is dismissed;
2. The proper Class Code applicable to employees of Advantage employees assigned to TAG during the Policy Period was 3507 (Construction or Agricultural Machinery Mfg.); and
3. Costs of these proceeding are assessed against the Petitioner, Advantage.

This Final Order is entered and effective this the 1 day of October, 2010.



Larry C. Knight, Jr.
Assistant Commissioner of Insurance

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 1st day of October, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division